

K.S.A. 1995 Supp. 44-551(b)(1) is the statute that grants Appeals Board review and provides in pertinent part:

“All acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge shall be subject to review by the board upon written request by any interested party within 10 days”

As previously noted, Special Administrative Law Judge William F. Morrissey's Order Denying Compensation was dated December 14, 1995. Accordingly, the effective date of the Order was the day after or December 15, 1995. See K.A.R. 51-18-2. Ten days after the effective date of this Order was December 25, 1995, which was the Christmas Day holiday. Therefore, since the tenth day was a statutory holiday, the claimant's time to file her Application for Review would have been extended to December 26, 1995. See K.A.R. 51-17-1. Claimant filed her Application for Review on January 4, 1996, which was clearly out of time.

In conjunction with her Application for Review, claimant filed a letter addressed to the Honorable Philip S. Harness, Director of Workers Compensation, which attached evidentiary affidavits in an effort to explain why the claimant's Application for Review was not timely filed. The letter further requested that the claimant's Application for Review be deemed timely and that a subsequent review of the subject order be permitted by the Appeals Board.

In summary, the claimant's attorney claims he did not receive the Special Administrative Law Judge's Order until January 2, 1996. Claimant's attorney alleged the reason he did not receive such Order was because the Order was delivered to the office of the Kansas Trial Lawyers Association, instead of his office, which is located in the same office building.

Some statutes that prescribe the time in which an appeal is to be filed permit the extension of the appeal time upon a party showing of excusable negligence based on failure to learn of the entry of judgement. See K.S.A. 60-2103(a); Schroeder v. Urban, 242 Kan. 710, 750 P.2d 405 (1988). However, K.S.A. 1995 Supp. 44-551(b)(1), the statute that under which this appeal is brought, does not have such language that would give a court authority to extend the appeal time. In an administrative proceeding, the time for taking an administrative appeal, as prescribed by statute, is jurisdictional, and delay beyond the statutory time is fatal to an appeal. State Bank Commissioner v. Emery, 19 Kan. App. 2d 1063, Syl. ¶ 1, 880 P.2d 783 (1994). Accordingly, the Appeals Board finds that since claimant's Application for Review was filed out of time the Appeals Board does not have jurisdiction to review this preliminary hearing Order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Application for Review filed by the claimant on January 4, 1996, is out of time and should be, and is hereby, dismissed. The Order of Special Administrative Law Judge William F. Morrissey, dated December 14, 1995, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of March 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James M. Crawl, Topeka, KS
James B. Biggs, Topeka, KS
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director